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General Assembly
Security Council

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General Assembly
Fifty-eighth session
Agenda items 67 and 156

Security Council
Fifty-ninth year

Review of the implementation of the Declaration on the Strengthening of International Security

Measures to eliminate international terrorism

Identical letters dated 3 May 2004 from the Chargé d'affaires a.i. of the Permanent Mission of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

I am writing following the most recent Palestinian terrorist attack perpetrated against the citizens of Israel.

On Sunday afternoon, 2 May 2004, two Palestinian terrorists perpetrated a deadly ambush on an Israeli car at the entrance to Gush Katif in the Gaza Strip, killing eight-month pregnant Tali Hatuel, age 34, and her four young daughters Hila, 11, Hadar, 9, Roni, 7, and Merav, 2. Tali Hatuel was a social worker for the Gaza Coast Regional Council where she worked with the families of terror victims. Standing over the shrouded bodies of his wife and daughters at the funeral in Ashkelon on Sunday evening, David Hatuel said, "We were so happy and now everything is terminated. You were my flowers and I will not forget you".

The terrorists opened fire on the small car, causing it to spin off the road. The gunmen subsequently approached the vehicle and assassinated each of the individual occupants at point-blank range, including the youngest daughter sitting in her toddler seat. The car was found riddled with bullets and the carpet inside was stained with blood. Another Israeli civilian, a resident of Ohad in the Eshkol region, traveling in a separate car, suffered gunfire wounds and two soldiers were injured. An explosive device was also detonated by terrorists near the scene of the shooting. Yasser Arafat's own Fatah Al-Aqsa Martyrs Brigades and Islamic Jihad claimed joint responsibility for the "heroic" attack in a call to the Associated Press. A celebration of the massacre is scheduled to take place in Palestinian Authority-controlled areas of Gaza later this week.

Yesterday's attack demonstrates yet again the strategic failure of the Palestinian Authority to undertake efforts on the ground to arrest, disrupt and restrain individuals and groups conducting and planning violent attacks on Israelis.

04-33494 (E) 030504

The flagrant refusal of the Palestinian leadership to fulfil its counter-terrorist obligations poses a direct affront to the commitments made in the road map and elsewhere, which compel the Palestinian Authority to prevent "all acts of violence against Israelis anywhere", and constitutes a brazen violation of the most basic obligations of international law, human rights and Security Council resolutions. But the attacks are more than the gravest of legal violations. The cold-blooded murder of those five young women flouts the most basic codes of humanity; and their tolerance and support by the Palestinian leadership is criminal in its moral depravity.

Israel calls upon the members and bodies of the international community to express their unequivocal condemnation of the deliberate murder of innocent civilians and to make clear to the Palestinian leadership and to those regime sponsors of terrorism their absolute rejection of terrorist tactics, and their acceptance of nothing less than the complete dismantling of terrorist organizations and relentless efforts to prevent terrorism and bring its perpetrators and supporters to justice, in accordance with international law, signed agreements between the parties, and Security Council resolutions, in particular resolution 1373 (2001). Only a unified and uncompromising stand against the perpetrators of these crimes can bring an end to the Palestinian strategy of terrorism and violence and enable progress towards the vision of a negotiated two-State solution, as part of the road map process.

I submit this letter in follow-up to numerous letters detailing the campaign of Palestinian terrorism launched in September 2000, which document the crimes for which the terrorists and their supporters must be held fully accountable.

I should be grateful if you would arrange to have the text of the present letter circulated as a document of the fifty-eighth session of the General Assembly, under agenda items 156 and 67, and of the Security Council. An identical letter is being submitted to the President of the Security Council.

(*Signed*) Arye **Mekel**
Ambassador
Chargé d'affaires a.i.

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General Assembly
Security Council

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4 May 2004

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General Assembly
Fifty-eighth session
Agenda item 30
Question of Cyprus

Security Council
Fifty-ninth year

Letter dated 3 May 2004 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith a statement about Cyprus issued by the Ministry of Foreign Affairs of Turkey on 1 May 2004 (see annex).

I should be grateful if the present letter and its annex were circulated as a document of the General Assembly, under agenda item 30, and of the Security Council.

(*Signed*) Ümit **Pamir**
Ambassador
Permanent Representative

04-33678 (E) 060504

Annex to the letter dated 3 May 2004 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General

1 May 2004

STATEMENT BY THE MINISTRY OF FOREIGN AFFAIRS OF TURKEY

1. Ten new members will be joining the EU on 1 May 2004. The unique case of Cyprus, which will become a member of the EU, is recognized in the report of the UN Secretary General of 1 April 2003, which was endorsed by the UN Security Council, in the following terms: "Cyprus is unique among EU candidate countries as a standing item on the Security Council agenda and emerging from a context of conflict."

2. The last round of efforts to reach a comprehensive settlement to reunify the Island was conducted under the good offices mission of the UN Secretary General since 1999. The main objective of this endeavor was to enable the Turkish Cypriot side and the Greek Cypriot side to reach a comprehensive settlement and bring into being a new state of affairs in Cyprus. It was considered that such a solution before 1 May 2004 would be in the interest of all concerned, and in the interest of international peace and security. It would have constituted the only means by which Cyprus could enter the European Union united on 1 May 2004.

3. The European Union has repeatedly expressed its strong preference for the accession of a reunited Cyprus and its support to the good offices mission of the UN Secretary-General and has made specific commitments to encourage and promote such an outcome.

4. During the final round conducted in Switzerland on 31 March 2004, the UN Secretary-General finalized the plan on the comprehensive settlement of the Cyprus problem to be submitted on each side for approval at separate and simultaneous referenda, in close consultation with the two parties in Cyprus and with Greece and Turkey.

The Foundation Agreement envisaged the establishment of a United Cyprus, based on a new bizonal partnership, with a federal government and two constituent states, namely the Greek Cypriot State and the Turkish Cypriot State. It is stipulated that "the Constituent States are of equal status, each of them exercises its authority within its territorial boundaries."

Furthermore, the Main Articles of the Foundation Agreement envisaged that "the Greek Cypriots and the Turkish Cypriots affirmed that Cyprus is their common home and acknowledged each other's distinct identity and integrity and that their relationship is not one of majority and minority but of political equality, where neither side may claim authority or jurisdiction over the other.

5. The EU Commission was present at the final stage of the negotiations in Switzerland and the EU commitments with regard to the comprehensive settlement were agreed upon between the parties and the EU Commission.

In the agreed text it was explicitly stated that „the basic principles of the EU have found their expression in the Foundation Agreement which introduced a new state of affairs in Cyprus and allows its peaceful integration into the EU." In this context, „the political equality of Greek Cypriots and Turkish Cypriots and the equal status of the two constituent states" were also underlined.

6. It was agreed to put the comprehensive settlement to separate simultaneous referenda, in order to enable the Turkish Cypriots and Greek Cypriots to exercise their inherent constitutive power, and adopt a settlement by their free and democratic, separately expressed common will.

7. The referenda were held in Cyprus on 24 April and overwhelming majority of Turkish Cypriots voted in favor of the UN Secretary-General's settlement plan which would have allowed for a united Cyprus to join the EU on 1 May 2004. However, the Greek Cypriots rejected it with a 75 percent majority, and efforts to allow a unified Cyprus to join the EU thus failed. In consequence, the Comprehensive Settlement Plan of the UN Secretary General has become null and void, in accordance with the relevant provisions of the Plan.

The Turkish Cypriot people have exercised their inherent constitutive power and expressed, through transparent and democratic process of referendum, their wishes for their political future within the EU as constituent partner of a united Cyprus. It is now incumbent on the EU to acknowledge and act upon the free and genuine expression of the will of the Turkish Cypriot people in this regard.

The separate simultaneous referenda held in Cyprus on 24 April 2004 underline the fact that there exist two separate peoples on the island, neither of which represents the other. Consequently, it would constitute an untenable claim that there is a single authority to represent the whole island, disregarding the reality that any solution on the island requires the consent of both sides.

8. In view of these facts and circumstances, it is only the Greek Cypriots who will enter the EU on 1 May 2004 under the terms of the Accession Treaty of 16 April 2003, which was based on a political and legal situation of a divided Island and consequently does not allow for accession of a united Cyprus to the EU. Thus, an international conflict is inevitably being imported into the European Union.

9. The Greek Cypriots, who will join the EU on 1 May 2004, have no authority to represent the whole of Cyprus or the Turkish Cypriots. They cannot claim authority, jurisdiction or sovereignty over the Turkish Cypriots, who have equal status, or over the entire Island of Cyprus. They cannot impose the „Republic of Cyprus" on the Turkish Cypriots. Thus, the Greek Cypriots who organized themselves under their own constitutional order and within their boundaries cannot be the legitimate government representing the whole of Cyprus and the Turkish Cypriots.

10. Turkish Cypriots, as a people who organized themselves under their constitutional order within their territorial boundaries, exercise governmental authority, jurisdiction and sovereignty. Turkey's recognition of the Turkish Republic of Northern Cyprus will remain unchanged.

11. The accession of Southern Cyprus cannot prejudice in whatsoever manner the rights and obligations of Turkey regarding Cyprus under the 1960 Treaties.

12. The official position of the Turkish Government on the political and legal situation and circumstances that have arisen as a result of Greek Cypriot rejection of the comprehensive settlement is based on these fundamental considerations, and legal and political facts.

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Security Council

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4 May 2004

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Letter dated 4 May 2004 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the President of the Security Council

Upon the instruction of my Government, I have the honour to request that the Plan for the Political Solution to the Situation in Kosovo and Metohija (see annex),* adopted by the National Assembly of the Republic of Serbia on 29 April 2004, be circulated as a document of the Security Council.

(*Signed*) Nebojsa **Kaludjerović**
Permanent Representative

* The Plan is reproduced in the language of submission only.

04-33865 (E) 060504

Annex to the letter dated 4 May 2004 from the Permanent Representative of Serbia and Montenegro to the United Nations addressed to the President of the Security Council

In accordance with the Resolution of the National Assembly of the Republic of Serbia on Kosovo and Metohija of 26 March 2004, the Declaration of the National Assembly of the Republic of Serbia on Kosovo and Metohija of 27 August 2003, the Declaration of the National Assembly of the Republic of Serbia on the situation in Kosovo and Metohija, the obligations of the international community and the Government of the Republic of Serbia of 31 May 2001 and the Resolution of the National Assembly of the Republic of Serbia on the situation in Kosovo and Metohija and the position of the Serb people and members of other non-Albanian communities of 4 May 2001,

In accordance with the obligation of the Republic of Serbia, as a member State of the State Union of Serbia and Montenegro, to fully contribute to the consistent implementation of the United Nations Security Council resolution 1244 of 10 June 1999, the Military-Technical Agreement on Kosovo and Metohija of 9 June 1999 and the Common Document on Cooperation between the Federal Republic of Yugoslavia and the United Nations Interim Administration Mission in Kosovo of 5 November 2001,

Taking into account that Kosovo and Metohija is an integral part of Serbia and of the State Union of Serbia and Montenegro,

On the basis of Article 73, para 2, of the Constitution of the Republic of Serbia and Article 130 of the Rules of Procedure of the National Assembly of the Republic of Serbia ("Official Gazette of the Republic of Serbia, No. 32/02 – revised text, 57/03, 12/04 and 29/04),

The National Assembly of the Republic of Serbia, at its Tenth Session of its First Regular Sitting in 2004, held on 29 April 2004, passed the

DECISION
ON THE ADOPTION OF THE PLAN FOR THE POLITICAL SOLUTION TO THE CURRENT SITUATION IN KOSOVO AND METOHIJA

1. This decision determines the Plan for the political solution to the current situation in Kosovo and Metohija.

The plan for the political solution to the current situation in Kosovo and Metohija has been attached to this decision and forms its integral part.

2. The Government of the Republic of Serbia shall be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija in carrying out the policy of the Republic of Serbia and executing other competences in accordance with the Constitution and the legislation.

Other State authorities in the Republic of Serbia shall also be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija in carrying out their competences related to Kosovo and Metohija, in accordance with the Constitution and the legislation.

The competent State authorities in the Republic of Serbia shall be under the obligation to proceed from the Plan for the political solution to the current situation in Kosovo and Metohija, in their foreign policy activities related to the current situation in Kosovo and Metohija, in cooperation with the competent authorities of the State Union of Serbia and Montenegro and the competent authorities of the Republic of Montenegro.

3. The plan for the political solution to the current situation in Kosovo and Metohija represents the framework for possible discussions on territorial autonomy in Kosovo and Metohija with representatives of international community with and outside of Kosovo and Metohija.

4. The Government of the Republic of Serbia shall be obliged to inform the National Assembly of the Republic of Serbia of the implementation of this decision.

5. The present decision shall enter into force a day after its publication in the "Official Gazette of the Republic of Serbia".

RS No. 33
Belgrade, 29 April 2004

NATIONAL ASSEMBLY OF THE REPUBLIC OF SERBIA

President

Predrag Marković

Attachment

PLAN FOR THE POLITICAL SOLUTION TO THE SITUATION IN KOSOVO AND METOHIJA

I. INTRODUCTION

The basic political and legal documents of contemporary civilisation have reaffirmed and strengthened the universal values of inherent dignity, equal and inalienable rights of all members of the human family, which create the foundation of freedom, justice and peace in the world. Documents such as the United Nations Charter, the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms are explicit that the protection of human life, freedom and safety is the vital duty of each and every public authority, including governments and inter-state bodies – international organisations and their security and legal mechanisms.

This duty deserves utmost prominence if a mandate to guarantee and provide effective protection for these values has been granted to the United Nations, as is the case in the Province of Kosovo and Metohija, where the world organisation has been present since the end of the 1999 war, under the United Nations Security Council Resolution 1244. The United Nations was created to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person." However, the materialisation of the aforementioned civilisational values in Kosovo and Metohija has been either impossible or seriously hindered since the United Nations arrived in the province. The historic and inherited, as well as more recent reasons for such a situation, also include a vast ethnic distance, which often translates itself into ethnic hatred and intolerance. The most pronounced manifestation of the former is the extreme animosity of ethnic Albanians, who make up a majority of the Kosovo population, towards the Kosovo Serbs, hardly one-third of whom remained in the Province after it was placed under the UN authority in June 1999.

Serbia does not want to diminish any effort by the international military and civilian missions in Kosovo and Metohija to curb inter-ethnic conflicts, but the above said explains why the U.N. mandate, as provided by the U.N. Security Council Resolution 1244, has been so difficult to realise. Under the Resolution 1244, the United Nations was to "*establish and oversee the development of provisional democratic self-governing institutions to ensure conditions for a peaceful and normal life for all inhabitants of Kosovo ..., to assure the safe and unimpeded return of all refugees and displaced persons to their homes in Kosovo..., and to protect and promote human rights*."

The events in Kosovo and Metohija that took place from March 17 to March 19, 2004, assuming the proportions of a pogrom and ethnic cleansing of Kosovo Serbs, unveiled the failure of the U.N. mandate to protect the life, freedom, safety, property, prosperity, religious sites and cultural heritage of the Kosovo Serb community. We believe that most of the U.N. mission discharged their duties conscientiously and in good faith, and that the reason for the failure was the objective inability of a

couple of tens of thousands of soldiers from NATO member states and other countries to offer effective physical protection to a hundred thousand Serbs, their property and churches, scattered throughout quite a large territory.

The nationalist intolerance demonstrated by the majority population is so powerful that it literally threatens the physical existence of local Serbs on the territory they have inhabited continually for more than ten centuries. Neither the United Nations nor the international community took this into account when they accepted a mission to preserve peace and protect human rights in Kosovo and Metohija. Consequently, it is necessary to change the institutional framework and the policy supposed to create conditions for a peaceful and normal life for all Serbs and other non-Albanians in Kosovo and Metohija and to ensure their safe and unimpeded return to the territory of Kosovo and Metohija, from which they were forcibly expelled. Likewise, it is necessary to provide for efficient protection and promotion of human rights in accordance with European norms and standards, since the Province, the State Union of Serbia and Montenegro, and the entire region for that matter, comprise a natural part of the European civilisation.

The suggested change should result in the principles, frameworks and institutions of a territorial autonomy for Serbs and other non-Albanians. This change will not threaten the territorial integrity of the Province, or the lawful rights of the Albanian ethnic community. The "autonomy-within-autonomy" principle does not mean that the fundamentals of a multiethnic and multicultural society will be abandoned. Quite the contrary, this is the only way to make it possible. Kosovo and Metohija and Serbia have a central place in the Balkans, whose multiethnicity and multiculturalism make it recognisable and historically viable. In time, the territorial autonomy will create conditions for the seriously damaged Kosovo society to embrace ethnic, religious and cultural reconciliation and mutual trust.

The international community has been trying for years to convince Serbia that the autonomy of Kosovo and Metohija requires special and atypical elements. Today, however, it has to admit that autonomy for Kosovo Serbs, for objective reasons and in order to make their survival possible, requires the same. It also entails the decentralisation of public affairs and the development of principles under which the population's needs can be met by the institutions closest to them. These are the principles of local democracy and self-administration that both the Council of Europe and the European Union have supported and promoted.

A plan for the political solution to the situation in Kosovo and Metohija set out in this document proceeded from the prevalent condition – Kosovo and Metohija is a part of the Republic of Serbia under the U.N. civilian and military administration. The document offers an outline of institutional guarantees for the position of the Serb community in the province. The document does not deal with the final status of Kosovo and Metohija, specified by the U.N. Security Council Resolution 1244.

II. TERRITORIAL AUTONOMY

2.1. The existing territorial organisation of Kosovo and Metohija mirrors the unsuccessful political and territorial concept of a multiethnic yet deeply divided society. It rests on an inaccurate presumption that the Kosovo autonomy, as defined under the 1974 Constitution, represented a rational and just solution for the ethnic relationship between the two dominant communities – Albanians and Serbs. Neither were the Albanians satisfied with it – as evidenced by a broad rebellion in the spring of 1981 – nor did the Serbs find it acceptable, since it offered no safeguards for their rights. The post-war period aside, the largest Kosovo Serb migration wave was recorded precisely in the early 1980s.

The major ethnic cleansing of Serbs took place before the March 17 pogrom – they were brutally driven out of their homes after June 1999. The Kosovo Serbs and other non-Albanians were confined to insignificant, scattered enclaves, from which they are slowly but surely disappearing. Having in mind this "reality", an independent Kosovo and Metohija offers itself as "a logical solution," notwithstanding the fact that it might destabilise the region with far-reaching consequences and bring about changes to the borders of Serbia and the state union of Serbia and Montenegro.

The Parliament of the Republic of Serbia believes that the only realistic, reasonable and just solution lies in genuine and effective actions aimed at creating conditions for multiethnicity in Kosovo and Metohija. In order to make it possible, it is necessary to root out any possibility of a Serb pogrom and violence happening again and, equally important, to enable all internally displaced persons to return to the province. Delaying their return for the lack of security and freedom of movement is no longer a plausible excuse. The safety of people in Kosovo and Metohija and the protection of their lives and property today really means a life within their own ethnic communities. This entails a proper territorial organisation of the province that allows for territorial autonomy for the Serbs, as well as other ethnic communities willing to accept it (Romanies, Gorans, Bosniaks/Muslims, etc.). The territorial autonomy does not call for a partition of Kosovo and Metohija, nor has it been conceived as a surrogate autonomy. It does not lead to a change of borders as the consequence of monoethnicity. Quite the contrary, it will prevent it by creating durable conditions for the survival and return of Serbs and other non-Albanians, so that multiethnicity, as a contemporary civilisational value, can be restored and developed in the future.

2.2. The municipalities, parts of municipalities and settlements in which Serbs comprised a majority before the 1999 exodus would be the areas of future autonomy. These territories would also include farmlands and other areas owned by the Serbs before the 1999 war. Having in mind that most of the exiled Serbs lived in urban areas, in which they either no longer exist or their numbers have been reduced to hundreds (Pristina, Pec, Gnjilane, Prizren, Urosevac, Istok, Lipljan, southern Kosovska Mitrovica, etc.), and that their return is not possible in the foreseeable future, **just compensation** (*compensatio iustum*) is a necessity.

In other words, the Serbs would be entitled to parts of the territory that links in a natural way Serb-dominated settlements, in which they previously did not make up a majority, but to which the Serbs exiled from their homes during the ethnic cleansing operation tend to return. This is a major precondition for the future areas of territorial autonomy to have the characteristics of a region. More

precisely, their geographical and natural features, economic and agricultural resources, the existing and potential transportation, energy, communal and other infrastructure, as well as other necessary elements, should combine into integrated territorial entities in which life and sustainable development, necessary for the repatriation of refugees to be a success, are possible.

Initially, these areas would not be contrived as urban centres, but realistic possibilities for them to develop into ones would be created. The areas that include urban centres would make available all segments of administration, security, education, health care, culture, sports and entertainment in accordance with the size and needs of the population. This requires a civilised, prosperous and democratically organised life. If it turns out to be impossible, the idea of a multiethnic and multicultural society, in which one ethnic and/or cultural community does not prosper at the expense of another, will be doomed to failure.

The territorial connection between autonomous areas is not a fundamental prerequisite for their existence and development, but a desirable one it certainly is. The fundamental safeguards for life and property and the freedom of movement are easier to achieve comprehensively in the areas linked in this way. Likewise, in determining the territorial entities it would be prudent to consider those close to central Serbia, because they are safer than areas in the Kosovo and Metohija interior. Communication with their compatriots in central Serbia, and, consequently, the very survival of the inhabitants of these areas, would be largely facilitated in this way.

The territorial autonomy of Serbs in Kosovo and Metohija would provide for five territorial entities/districts – the Central Kosovo District, the North Kosovo District, the Kosovo-Morava River Basin District, the Sarplanina Mountain District and the Metohija District. The most significant religious sites, as well as the Serb cultural and historical monuments that belong to or can be connected with the above listed districts, would be an integral part of them. The others would require appropriate guarantees by the Republic of Serbia, international guarantees and effective physical protection. The Districts would make up the Region - the political and legal holder of territorial autonomy within Kosovo and Metohija.

III. CHARACTERISTICS OF AUTONOMY OF THE AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

This Plan provides dual protection for the Serb community in Kosovo and Metohija – through territorial autonomy (arising from the establishment of the Region), which would protect most of the Serbs, and through cultural and personal autonomy, which would protect the rights of Serbs living outside the area of territorial autonomy (the Region). The two forms of protection, put together, define the term "Autonomous Serb Community in Kosovo and Metohija."

3.1. Organisation of the Region

In the areas in which the Serbs make up a compact population, territorial autonomy will be established in the form of the Region, with unified rights, powers and institutions. In the domains of rights and powers as defined under Item 3.1.2., legislative, executive and judicial powers will be

vested in citizens. In the exercise of their duties, government bodies are obliged to follow the principles of separation of power and its democratic control, as well as the tenets of ethnic, cultural and religious tolerance.

3.1.2. Competencies of the Region

In specifying the powers of the Region, the principle of subsidiarity has been used. This principle defines the powers that, under the circumstances, will be exercised more efficiently within the territorial autonomy and local self-government than within Kosovo and Metohija in its entirety. These powers are:

- Organisation of the Region (the organisation of its bodies and electoral process)
- Security (police) and civilian protection
- Judiciary
- Education
- Health care
- Social policy
- Culture, media and sports
- Protection of cultural heritage
- Marital and family relations, inheritance and guardianship
- Real estate property rights
- Privatisation process in the Region
- Public registers
- Official use of language and script
- Sanctions provided for violations of regulations falling within the jurisdiction of the Region
- Development programmes
- Local self-government
- International regional cooperation within the jurisdiction of the Region
- Spatial planning
- Ecological protection
- Infrastructure of importance for the Region
- Establishment of the sources of revenue (budget and annual final report)
- Public property management
- Industry on the territory of the Region
- Natural and mineral resources

- Agriculture, cattle breeding, forestry, hunting and fishery
- Services

In the above sectors, the powers are exercised in compliance with the prevailing policy of Kosovo and Metohija.

3.1.3. Bodies of the Region

The bodies of territorial autonomy (the Region) are: the Assembly of the Region, the Executive Council of the Region, administrative bodies and courts (first- and second-instance courts).

The Assembly of the Region is the highest representative and legislative body of territorial autonomy. It is elected in a secret ballot, on the basis of the universal and equal right to vote given to all citizens of the five Districts that comprise the Region. There is approximately proportional representation of each District in the unicameral regional assembly. The Assembly is granted legislative and supervising powers.

The Executive Council of the Region is the holder of executive powers. Together with administrative bodies, it implements the regulations passed by the Assembly of the Region, defines and runs policies falling within the jurisdiction of the Region. The Executive Council is also in charge of implementing the regulations passed by the Parliament of Kosovo and Metohija in the Districts that make up the Region.

The election of the Assembly, the Executive Council, administrative bodies and other organs and bodies, as well as the mode of their operation, is defined by regulations passed by the Assembly of the Region.

Judiciary. Apart from legislative and executive powers, the Region has judicial powers, too, effective in the Districts comprising the Region. The judiciary is to ensure that general legal norms are applied in an independent, unbiased and just manner in individual disputes involving citizens, legal persons or public authorities. As ethnic bias makes it very difficult to apply laws and establish the facts of relevance to their implementation in any community divided along ethnic lines, the exercise of judicial powers in Kosovo and Metohija has been quite problematic. Accordingly, it is necessary that judicial powers, save final decisions on legality, be exercised in the Region.

First-instance courts of general jurisdiction are organised on the municipal level, covering one or more municipalities within the Region. The Region also has a **second-instance court of general jurisdiction**. Commercial and administrative disputes would fall within the jurisdiction of the Regional Court.

The Supreme Court of Kosovo and Metohija is the highest court within the competence of the Province, beyond the constitutional-court control and protection of human rights and civil liberties guaranteed by the constitution and international treaties.

The Special Chamber of the Supreme Court on Constitutional Framework Matters is to establish a three-member Panel including a Serb judge of the Supreme Court, an Albanian judge of the Supreme Court and an international judge appointed by the Special Representative of the Secretary-General of the United Nations (SRSG). The Panel rules in all proceedings related to the regulations and actions by regional and local-self government bodies within the Region.

The Region has **municipal public prosecutors** and the **Regional Public Prosecutor**, performing their duties in accordance with the applicable law.

The Region has a substantial role in the election of judges of first-instance courts and the Regional Court, municipal public prosecutors and the Regional Public Prosecutor.

The judges and prosecutors are appointed by the SRSG, following nominations by the Assembly of the Region, selected from a list of candidates put forward by the Advisory Council for Regional Judiciary. The Assembly of the Region also proposes to the Parliamentary Council of the Kosovo Serb Community two-thirds of Serb candidates for judges of the Supreme Court of Kosovo and Metohija. The Assembly of the Region appoints regional magistrates.

The Provisional Institutions of Self-Government in Kosovo and Metohija transfer to the Region the responsibility of funding the courts, salaries and other income of judges, public prosecutors and magistrates on the territory of the Region.

3.2. Financial Autonomy of the Region

An open market economy is being built in Kosovo and Metohija, and provisions of this Plan do not and must not endanger a free flow of people, goods, services and capital in the territory of the Province.

The Budget of the Region has sufficient income for funding the operations under its competence. The budgetary sources of income include taxes, fees, charges and other dues, property income, donations, etc. The central authority provides subsidies for the Region to perform transferred duties. The Region is allowed to borrow for investment purposes. The Assembly of the Region passes the Budget and annual financial reports.

Income from customs duties, value added tax, excise taxes and other similar dues is channeled to the central authority. The Region and its municipalities will be entitled to income from direct taxes, including income tax, profit tax, property tax, administrative and utility taxes, public property usage tax and other taxes. The Region has an autonomous tax authority.

The Region and the municipalities comprising the Region own the property that serves the purpose of their operation.

On behalf of Kosovo and Metohija, the SRSG will enter into bilateral and regional free-trade agreements with the states of the region.

3.3. The Status of Serbs Outside the Territory of the Region

Aside from classic human rights guaranteed to all citizens of Kosovo and Metohija, the Serbs living outside the territory of the Region must enjoy special collective rights, necessary for them to preserve their identity. They are exercised not only as the rights arising from *status negativus*, which imply the obligation of the Provisional Institutions of Self-Government to restrain from interfering in the free exercise of these rights, or the rights arising from *status activus*, which allow the Kosovo Serbs to participate in public life and enjoy equal employment treatment in public services, but also as the rights inherent to *status positivus*, which imply the duty of the Provisional Institutions of Self-Government to take measures to improve the position of the Kosovo Serb community in parts of Kosovo and Metohija in which it has been threatened.

Proceeding from these assumptions, the Serb national community must be granted the following legal instruments – freedom of expression of national identity; prohibition of discrimination; measures to ensure equality; prohibition of forcible assimilation; development of the spirit of tolerance; prohibition of incitement to racial, national and religious hatred; the right to preserve identity (the right to use the Serbian language, the right to choose and use a personal name, the official use of language and script, the right to foster culture and tradition, the right to equal opportunity with respect to employment with public bodies, education in Serbian, the use of national symbols, access to public information in Serbian); the right of association; the right of cooperation with compatriots in the Region and outside the territory of Kosovo and Metohija; prohibition of the violation of rights of members of the Serb community; court protection for members of the Serb community; the establishment of a national council of the Serb community and the Ombudsman to protect the rights of members of national communities.

The rights of members of the Serb national community are listed more specifically in the Annex to this Plan.

3.4. The Position of other National Communities in the Region

Member of other national communities living in the districts that comprise the Region enjoy all the rights referred to under Paragraph 4 (Rights of Communities and Their Members) of the Constitutional Framework for Provisional Self-Government.

IV. PROTECTION AND PRESERVATION OF CULTURAL HERITAGE

4.1. Cultural heritage in Kosovo and Metohija deserves special protection and preservation;

First, because the valuable cultural monuments in Kosovo and Metohija represent a unique cultural legacy recognised long ago as European heritage;

Secondly, because the 1972 Convention Concerning the Protection of the World Cultural and Natural Heritage recognised the duty of each State Party to the Convention to ensure the protection, conservation and transmission to future generations of the cultural and natural heritage "situated on its territory."

Thirdly, because, together with the population and the land ownership, they represent the third incontestable criterion of establishing the rights of Serbs and Albanians in Kosovo and Metohija.

4.2. The cultural monuments in Kosovo and Metohija represent a unique legacy recognised between World War I and World War II as an integral part of the European heritage.

It is important to note that the cultural heritage in Kosovo and Metohija

- preserved the architecture and, in part, the art of the Roman and Byzantine Empires, the mediaeval Serb state, the Ottoman Empire and more recent Serb and Albanian architecture in an uninterrupted continuum of centuries, which is a unique case in the history of architecture and art;
- presents the peak of the Byzantine architecture and art;
- largely integrates the Orthodox Byzantine architecture with that of the Roman Catholics, which is also a unique phenomenon;
- preserved the monuments and sites that exemplify two centuries (from 1170 to 1371) of growth of the medieval Serbia as one of the developed European states;

This unique European cultural heritage must be preserved in its original form and, enriched, transferred to future generations. This is an imperative under all conventions concerning cultural heritage.

4.3. Based on the United Nations Security Council Resolution 1244, the Serb cultural heritage in Kosovo and Metohija is currently under the authority of the United Nations Interim Administration Mission in Kosovo (UNMIK). However, the legitimate inheritor and guardian of the cultural heritage in Kosovo and Metohija is the Republic of Serbia, because

- the Republic of Serbia protected and preserved the cultural heritage in Kosovo and Metohija on the basis of State laws;
- the mediaeval Serb State built most of the cultural monuments in Kosovo and Metohija and the most valuable of them;
- the cultural monuments are largely owned by the Serbian Orthodox Church;
- after the liberation from Turkish rule, Serbia found most of these monuments abandoned and in ruins. During the last century, the country invested enormous financial and human resources in their reconstruction;
- Principle 9 of the 1976 Vancouver Declaration on Human Settlements stipulates that *every country should have the right to be a sovereign inheritor of its own cultural values created throughout its history,* which is precisely the case of Serbian cultural heritage in Kosovo and Metohija.

Since June 1999, the UNMIK administration and Provisional Institutions of Self-Government have been trying to impose the term "Kosovo heritage", in a clear bid to alienate it from Serbia. Relevant international conventions and general practice make it clear that cultural heritage belongs to nations

or states. A territory cannot have a heritage. In its 2003 Report on the cultural heritage in Kosovo, UNESCO has avoided the term "Kosovo heritage", preferring the "cultural heritage in Kosovo."

4.4. The prevailing approach to the protection, preservation and maintenance of cultural heritage in Kosovo and Metohija is best illustrated by the following:

- UNMIK has failed to establish a body in charge of preserving the cultural heritage in Kosovo and Metohija, even though it had to do so under the 1954 Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (Article 7, Paragraph 2). UNMIK has also failed to accept the responsibility for the protection of cultural property "within the territory of other High Contracting Parties", Serbia in this case, as provided for by Article 4 of the Hague Convention.
- Contrary to this obligation, UNMIK, led by political criteria, transferred the responsibility for the protection and preservation of cultural heritage to Provisional Institutions of Self-Government, even though aware that they have not reached the level of proficiency required for the task. Moreover, they showed no sign of willingness to carry out this duty effectively.

> Consequently, this unique cultural heritage was left without proper official care for more than four years. There was no one to save it from the ravages of time, which the world can only describe as an uncivilised act.

The entire period since June 1999, when the barbarous destruction of cultural heritage in Kosovo and Metohija began, as well as the latest events in Kosovo on March 17-19, makes it perfectly clear that the guarantees that have been offered are insufficient and that KFOR physical protection is not enough. Vandals in Kosovo and Metohija think that there is no legal guardian to take care of the Serb heritage in the province. On March 17 and 18 alone, 35 churches and monasteries were demolished and damaged – 16 of them being items of cultural heritage. The latest wave of destruction exceeded the post-war one of 1999, because two of six monuments of universal value, as defined by the 2003 UNESCO Report on Kosovo, were devastated – the Monastery of the Holy Archangels, with its tomb of King Dusan, and the unique Church of Bogorodica Ljeviska.

If the status of these monuments does not change, the same crime can happen again.

4.5. It is well known that the Serb cultural monuments are spread throughout the territory of Kosovo and Metohija. Accordingly, it requires dual protection - through the status of the cultural monuments within the Region and the status they may have outside the Region.

Within the Region, the responsibility for the preservation of cultural heritage has been defined as its autonomous power, exercised under the Law on Cultural Heritage of Serbia.

Outside the Region, the cultural monuments of major importance are to be granted the status of cultural property under the Republic of Serbia's direct administration. Such a status ensures the implementation of Article 6, Annex II of the U.N. Security Council Resolution 1244, which permits Serbian personnel "to maintain a presence at Serb patrimonial sites." It is necessary to establish criteria under which cultural property suitable for this status is selected. It must include the cultural heritage of special importance for the history and culture of Serbia and the Serbian Orthodox Church,

which can also qualify for the European cultural heritage. (the Pec Patriarchate, the Kosovo Battle Memorial, the tombs of the Nemanjic Dynasty rulers, the oldest medieval town in Serbia and all active monasteries). The reasonable assumption is that the list of monuments to be granted the exterritorial status will be made by an UNESCO expert committee, at the proposal of the Republic of Serbia.

V. RELATIONSHIP BETWEEN THE BODIES OF TERRITORIAL AUTONOMY (REGION) AND THE PROVISIONAL INSTITUTIONS OF SELF-GOVERNMENT IN KOSOVO AND METOHIJA

5.1. Principles on which the relationship is based

- the principle of subsidiarity
- the principle of equality of citizens in terms of exercise and protection of their basic freedoms and rights
- the principle of coordination
- the principle of harmonisation
- the principle of subordination

The relationship between Provisional Institutions of Self-Government and the Region should be defined normatively so as to ensure a high level of autonomy (substantial autonomy) for the Region in relation to the provisional institutions of self-government. This can be achieved by establishing a broad spectre of originery and transferred powers, which the Region can exercise independently and autonomously. Thus the Region can assume full responsibility for the duties failing within its competence. The principle of subsidiarity and a mechanism to solve possible conflicts of competence between the Region and provisional institutions of self-government can eliminate successfully the negative sides of a multi-level decision-making process typical of complex power distribution structures.

In exercising its powers and responsibilities, the autonomy of the Region would be limited by the universal principle of respect to human rights of all inhabitants of the Region. The restriction of the rights of the Region would also involve the principle of coordination of the work of regional bodies, as well as the harmonisation of acts and procedures of the regional administration in the application of law and other general enactments, through the activities of the Regional Administrator. Certain restrictions would be also placed on the implementation of the principle of subordination through measures in the supervising process exercised by the Provisional Institutions of Self-Government over the bodies of the Region. Furthermore, the autonomy of the Region would be limited considerably by the opportunity given to the Provisional Institutions of Self-Government to implement certain general regulations on the territory of the Region, when the very nature of them necessitates such an action.

5.2. Substance of the relationship

5.2.1. Any change to the status of territorial autonomy (Region) requires the consent of no less than two-thirds of all members of the Assembly of the Region.

5.2.2. In accordance with the principle of subsidiarity, apart from the originery powers of the Region, all powers that are not reserved to the SRSG and the provisional institutions of self-government are vested in the Region and municipalities.

5.2.3. In exercising their powers, the bodies of the Region cannot restrict the freedoms and rights of citizens guaranteed by the Constitutional Framework.

5.2.4. Regulations of the Region have primacy in implementation over the regulations of provisional institutions of self-government. In case of conflict between the two, a regional regulation will apply until the Special Chamber of the Supreme Court of Kosovo and Metohija makes a final decision.

5.2.5. The Special Chamber of the Supreme Court of Kosovo and Metohija decides in case of conflict of competence between the bodies of the Region and the Provisional Institutions of Self-Government.

5.2.6. The Executive Council of the Region is authorised to institute proceedings before the Special Chamber of the Supreme Court of Kosovo and Metohija over incompatibilities between the regulations of the Provisional Institutions of Self-Government and the Constitutional Framework, if they impinge upon the competence of the Region.

5.2.7. The regulations of the Region enacted within the competence of the Region must be in compliance with the basic act, the Statute of the Region. The Regional Court exercises control of their compliance with the Statute of the Region in administrative court proceedings.

5.2.8. The regulations of the Region endorsed for the purpose of implementation of the regulations of the provisional institutions of self-government must be in compliance with general enactments and the Constitutional Framework.

5.2.9. As a rule, the regulations of the provisional institutions of self-government are implemented on the territory of the Region by relevant regional bodies.

5.2.10. The bodies of the Provisional Institutions of Self-Government have the right to supervise the implementation of regulations of the Provisional Institutions of Self-Government by the bodies of the Region. In the supervising procedure, the bodies of the Provisional Institutions of Self-Government may point to irregularities in the implementation of their enactments. If after that the bodies of provisional institutions of self-government find out that the irregularities have not been eliminated, they can institute proceedings for the annulment of a regional general enactment before the Special Chamber of the Supreme Court of Kosovo and Metohija.

5.2.11. The regulations and decisions of the Provisional Institutions of Self-Government the nature of which requires their direct application by the Provisional Institutions of Self-Government on the territory of the Region, cannot go into force if a majority in the Serb parliamentary delegation to the

Parliament of Kosovo calls for a special procedure provided for issues of vital interest for the Serb national community.

5.2.12. If the harmonisation process fails to produce a consensus, a final decision will be made by a special Panel consisting of a representative of the Serb national community, a representative of the proponent and a member appointed by the SRSG.

5.2.13. The Assembly of the Region can initiate legislation falling within the competence of the Parliament of Kosovo and Metohija.

5.2.14. Prior to the adoption of a law of particular significance for the Region, the Parliament of Kosovo and Metohija is obliged to seek the opinion of the Assembly of the Region.

5.2.15. The Assembly of the Region can place an absolute veto on an international agreement made by the Provisional Institutions of Self-Government, if it is related to issues falling within the competence of the Region.

5.2.16. Amendments to the Constitutional Framework and laws of the Parliament of Kosovo and Metohija related to the rights to real estate located within the Region cannot go into force on the territory of the Region without the consent of the Assembly of the Region.

5.2.17. For the territory of the Region, the SRSG appoints a Regional Administrator, whose powers include the supervision of implementation of regulations passed by the Provisional Institutions of Self-Government, and harmonisation of the work of the regional administration with the provisional institutions of self-government.

5.2.18. The Regional Administrator is appointed from the list of five candidates nominated by the Assembly of the Region.

VI. PROCEDURE FOR THE ESTABLISHMENT OF THE AUTONOMOUS SERB COMMUNITY IN KOSOVO AND METOHIJA

6.1. In order to establish the Autonomous Serb Community in Kosovo and Metohija, the United Nations Security Council must pass a Resolution. The purpose of this document would be the materialisation of special rights of the Serb community, as the only way to resolve promptly the question of its survival in the Province, and make it possible for two thirds of the Kosovo Serb population (around 220,000) expelled to central Serbia to return to their homes in Kosovo and Metohija. The experience gained in nearly five years of the U.N. military and civil presence in the Province has made it clear that the only way to ensure the survival and return of Kosovo Serbs is to implement a mechanism of interim administration within Kosovo and Metohija, which would be similar to that provided under Item 10 of the U.N. Security Council Resolution 1244 for the entire province "within the Federal Republic of Yugoslavia." It is the model of "substantial autonomy."

In terms of goals and content, the new U.N. Security Council Resolution would not replace Resolution 1244, but only add to it new provisions that would solve in principle the major problem in Kosovo and Metohija – the protection of rights of the Serb national community.

6.2. The new U.N. Security Council Resolution implies the drafting and promulgation of the Statute of the Autonomous Serb Community in Kosovo and Metohija. The Statute would define the Districts of the Region. The drafting of the Statute would be based on the drafting procedure applied in the case of the Constitutional Framework. The only difference would be apart from representatives of UNMIK, Kosovo Serbs and Kosovo Albanians (i.e. the Provisional Institutions of Self-Government), representatives of Serbia, i.e. Serbia and Montenegro would also take part in the process. This is necessary to ensure general consensus for the establishment of the Autonomous Serb Community in Kosovo and Metohija.

Following consultations between legitimate representatives of all parties concerned, the final text of the Statute of the Autonomous Serb Community in Kosovo and Metohija would be promulgated by a Decree promulgated by the SRSG.

6.3. Procedural operations should be completed as soon as possible, so that the Statute of the Autonomous Serb Community in Kosovo and Metohija can be applied immediately after its promulgation. The adoption and application of the Statute would provide sufficient guarantees for the Kosovo Serb community, including the majority expelled to central Serbia, so that they can live freely and participate in public life not only within the newly-established Region, but the whole of Kosovo and Metohija. Their participation in the elections for new regional bodies would be a strong encouragement for them to take part in the upcoming elections in Kosovo and Metohija. In a nutshell, the new organisation of the life of Serbs in the province would certainly open a new, peacetime page in the life of the multiethnic society of Kosovo and Metohija.

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Annex: Status of Serbs Outside Territorial Autonomy (Region)

Freedom of expression of national identity

The freedom to express national affiliation is guaranteed.

No one is obliged to reveal his/her national affiliation.

Prohibition of Discrimination

Equality before the law and equal legal protection are guaranteed, regardless of national affiliation.

Any discrimination based on national affiliation is prohibited.

Measures to Ensure Equality

It is the duty of the provisional institutions of self-government to adopt, whenever necessary, appropriate measures to improve full and effective equality between members of different national communities, in all spheres of economic, social, political and cultural life.

Prohibition of Forcible Assimilation

Assimilation of members of national communities against their will is prohibited.

The provisional institutions of self-government are obliged to protect members of national communities against any action aimed at such assimilation.

Promotion of a Spirit of Tolerance

In the spheres of education, culture and information, the Provisional Institutions of Self-Government promote the spirit of tolerance and intercultural dialogue, and take effective measures to promote mutual respect, understanding and cooperation among all inhabitants of Kosovo and Metohija, regardless of their ethnic, cultural, linguistic or religious identity.

Prohibition of Incitement to Racial, National and Ethnic Hatred

Any incitement to, and instigation of, national, racial, religious or any other inequality, as well as any action to instigate or incite national, racial, religious or any other hatred and animosity are prohibited.

The Right to Preservation of Identity

Members of national communities can freely use their language and script, both in private and in public.

Members of national communities have the right to use their names and surnames in their own languages. They are also allowed to write their names in all identification documents using the language and spelling of their respective national communities.

On the territory of a self-governing municipality traditionally inhabited by a national community, the equal official use of their language and script is permitted. The official use of the language of a national community particularly concerns the following: court and administrative proceedings in the language of a national community; the use of the language of a national community in communication between public authorities and citizens; the issuance of identification documents and public registers kept in the language of a national community, as well as the acceptance of these documents as valid; the use of the language of a national community on ballot papers and in other electoral materials and in the work of representative bodies.

Members of national communities have the right to display traditional local names, the names of streets and settlements, and topographical indications in their own languages.

Members of national communities have the right to express, preserve, foster, develop, transfer and demonstrate in public their national, ethnic, cultural, religious and linguistic identity.

Members of national communities are entitled to appropriate representation in public services, the Provisional Institutions of Self-Government and local self-governments.

Members of national communities are entitled to education in their own languages in public pre-school, primary school and secondary school establishments.

Members of national communities have the right to establish private educational institutions at all levels.

Members of national communities have the right to choose and use their national symbols in public.

Members of national communities have the right to full and unbiased information in their own languages, including the right to express, receive, send and exchange information and ideas, as well as the right to establish their own media.

Right to Association

Members of national communities have the right to establish educational and cultural organisations and associations, financed on a voluntary basis.

The organisations and associations of national communities are granted a special role in the exercise of rights of their members.

Cooperation with Compatriots in the Region and Outside Kosovo and Metohija

Members of national communities have the right to maintain unhindered contacts and to cooperate with their compatriots living in the Region and outside the territory of Kosovo and Metohija.

Prohibition of Violations of the Rights of Members of National Communities

Measures that can change the population ratio in the areas inhabited by different national communities and those that can hinder the exercise and materialisation of their rights are prohibited.

Judicial Protection of the Rights of Members of National Communities

Members of national communities have to right to seek court protection of their rights.

Having exhausted all regular legal remedies, a member of a national community who considers his/her right violated or denied, can initiate proceedings for the protection of his/her rights before the European Court of Human Rights.

National Council of a National Community

Members of national communities can elect National Councils, in order to exercise their right to self-government in the spheres of use of language and script, education, information and culture.

The National Council represents the given national community in the spheres of official use of its language, education, information and culture, participates in the decision-making process and decides on relevant matters, and establishes institutions in these fields.

The Serb national community can decide that the functions of its National Council be performed by regional bodies.

Ombudsman for the Rights of Members of National Communities

The Ombudsman has the right to monitor respect of the rights of members of national communities and ensure promotion of these rights; to receive petitions from persons who believe that the rights they have as members of national minorities have been violated or denied, and to address the Provisional Institutions of Self-Government in connection with the petitions; to prepare draft legislation to ensure the implementation and promotion of the rights of national communities and, in the capacity of authorised proponent, to submit them to the provisional institutions of self-government for adoption; to institute proceedings for constitutional review before the Special Chamber of the Supreme Court of Kosovo and Metohija.

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Letter dated 4 May 2004 from the President of the International Tribunal for the Prosecution of Persons Responsible for Serious Violations of International Humanitarian Law Committed in the Territory of the Former Yugoslavia since 1991, addressed to the President of the Security Council

Pursuant to my responsibilities as President of the International Criminal Tribunal for the Former Yugoslavia, I bring to your attention a report prepared by the Prosecutor pursuant to rule 7 bis of the Rules of Procedure and Evidence of the Tribunal (see annex, enclosure).

In that report, the Prosecutor complains of a consistent failure on the part of Serbia and Montenegro to comply with its obligations under article 29 of the Statute of the Tribunal and rule 39 of the Rules of Procedure and Evidence. It describes Serbia and Montenegro's present cooperation as nearly non-existent and states that the level of cooperation has declined following the December 2003 elections.

In particular, the Prosecutor identifies failures on the part of Serbia and Montenegro to execute arrest warrants issued by the Tribunal and to respond to requests made by the Registrar, pursuant to rule 59 of the Tribunal's Rules of Procedure and Evidence, to explain those failures. The Prosecutor also identifies failures on the part of Serbia and Montenegro to cooperate with the Prosecutor in her attempts to secure the testimony of witnesses and documentary evidence and to grant waivers to enable witnesses either to provide statements to the Office of the Prosecutor or to testify before the Tribunal.

I view the report of the Prosecutor as indicating extremely serious failures on the part of Serbia and Montenegro, and the Prosecutor has satisfied me that Serbia and Montenegro is failing to comply with its obligations under article 29 of the statute and rule 39 of the Rules of Procedure and Evidence. I also share the concern of the Prosecutor that such failures are detrimental to the expectations placed upon the Tribunal by its completion strategy and could seriously impinge on the Tribunal's ability to meet those expectations.

I would be most grateful if you could bring the report of the Prosecutor to the attention of the members of the Security Council.

(*Signed*) Theodor **Meron**

04-34071 (E) 100504

Annex

Letter dated 29 April 2004 from the Prosecutor of the International Criminal Tribunal for the Former Yugoslavia addressed to the President of the International Criminal Tribunal for the Former Yugoslavia

In accordance with rule 7 bis, I wish herewith to respectfully submit to you that Serbia and Montenegro consistently fails to comply with its obligation under article 29 of the statute of the Tribunal and rule 39 of the Rules of Procedure and Evidence. The attached report provides detailed information (see enclosure).

I would therefore kindly ask you to consider notifying the Security Council of Serbia and Montenegro's failure to comply.

(*Signed*) Carla **Del Ponte**
Prosecutor

Enclosure

Report to the President of the International Criminal Tribunal for the Former Yugoslavia regarding the non-compliance on the part of Serbia and Montenegro with its obligation to cooperate with the Tribunal

INTRODUCTION

1. I take this opportunity to draw the President's attention to the fact that the Union of Serbia and Montenegro has failed in several ways to meet its obligations under Article 29 of the Statute of the Tribunal, which I would now like to enumerate. I regret that this is not the first time that I have been compelled to bring to the attention of the President of this Tribunal the unacceptable state of co-operation by the Belgrade authorities, indeed it was as recently as September 2002 that I filed a similar report based solely on Belgrade's dismal performance in relation to the question of the apprehension of indicted fugitives.

2. At present Serbia and Montenegro's co-operation with the Office of the Prosecutor (OTP) can be described as nearly non existent in all main areas, but in particular in relation to (i) the apprehension and surrender of fugitives indicted by this Tribunal; (ii) receiving access to or copies of specific and relevant documents; and (iii) granting waivers to enable witnesses to either provide statements to the OTP or to testify before the Tribunal. This situation has been prevalent since the December 2003 Serbian parliamentary elections. Before those elections meaningful co-operation, however, remained insufficient and difficult throughout the year 2003. As a consequence, Belgrade's lack of co-operation may have a significant impact on ICTY's completion strategy and projected timeline for the completion of trials and investigations.

3. Co-operation has been severely affected by the political uncertainties and dramatic developments that followed the assassination of Prime Minister Zoran Djindjic on 12 March 2003. Upon the establishment of the new State Union of Serbia and Montenegro and its new leadership in February-March 2003, there have been some

positive developments (such as the amendment of the Law on Co-operation, with the abolition of the former Article 39, prohibiting the surrender of any accused indicted by the Tribunal after the passage of the Law). There was hope, and promises were made that the police actions that followed the Prime Minister's assassination would lead to the arrests of the remaining ICTY fugitives believed to be at large in Serbia. Unfortunately, no ICTY fugitives were amongst the approximately 10,000 persons arrested in the course of that police operation. At the request of the Belgrade authorities, I agreed to speed up the issuing of the indictment against two OTP suspects who were arrested during this operation, namely Franko Simatovic and Jovica Stanisic, so that they could be transferred rapidly to The Hague. The indictment against these accused was confirmed on 1 May 2003 and they were transferred to seat of the Tribunal on 30 May and 11 June respectively.

4. Until the Fall of 2003, key government officials in Belgrade were at least verbally expressing their political will to co-operate with the ICTY, even though such statements were often not associated with positive actions. When the new government took office on 3 March 2004, even the language of the new Serbian Government officials has changed significantly. The new leadership has stated publicly that co-operation with the Tribunal is not a priority, that there must be "two-way co-operation" and that there will be no co-operation in respect of cases based solely on command responsibility as understood by the Serb authorities. Moreover, the most senior officials have made unsubstantiated allegations about the impact of co-operation with ICTY on the country's stability. Such statements demonstrate a lack of willingness by the new authorities to co-operate fully or in good faith with the Tribunal. This has also been confirmed by their actions or lack thereof. After the change of government at State Union level, in April 2004, the new Minister of Foreign Affairs made some positive statements. Also, the Minister of Defence and the Serbian Minister of Interior met fugitives, apparently to try to convince them to surrender voluntarily to ICTY. No concrete results followed, however.

5. New obstacles and bureaucratic barriers have been created at the operational level in areas where previously a reasonable level of communication existed. Moreover,

despite several informal attempts, it has not been possible for my Office to establish any channel of communication at the higher levels. It is clear that on all major issues requiring the co-operation of the Serbian and Montenegrin authorities, such as the arrest and transfer of fugitives, the production of documents and ICTY access to witnesses, the Serb authorities would appear to have renounced the provision of more than a minimal level of co-operation with the ICTY.

APPREHENSION OF FUGITIVES

6. I would now like to address some of the major issues of non-co-operation, starting with the arrest and transfer of the indictees still at large.

7. In addition to the surrender of Franko Simatovic and Jovica Stanisic, mentioned above, the only arrests carried out by the Serb authorities in 2003 involved Miroslav Radic, who was surrendered on 17 May 2003 followed by the arrest of Veselin Sljivancanin who was apprehended in his apartment in Belgrade on 13 June 2003, one day before the deadline for the funding certification by the USA Government. He was surrendered to the Tribunal on 2 July 2003. Both of these accused had been high priority fugitives for many years. Since then, three other ICTY indictees were transferred to The Hague: Zeljko Meakic, who surrendered voluntarily on 4 July 2003, Mitar Rasevic, who also surrendered voluntarily on 15 August 2003, and Vladimir Kovacevic who was, as alleged by the Serb authorities, arrested and subsequently surrendered on 23 October 2003. In my opinion the Serb authorities are not entitled to any credit for the surrender of Meakic or Rasevic, since all arrangements that led to their surrender were made directly by the ICTY. Even in relation to Kovacevic, doubts remain regarding the exact circumstances of his alleged arrest. Indeed, on 15 March 2004, in the course of a Court proceeding before this Tribunal the accused stated that he had intended to surrender, but he had been prevented to do so by then Minister of Interior Mihajlovic. Therefore, it cannot be excluded that Kovacevic's surrender had been staged to score undue credit.

8. It is my belief, based on intelligence received in my Office, that out of 21 persons who have been indicted by this Tribunal and who have not been apprehended or

surrendered to The Hague, 15 of them either reside permanently in or travel frequently to Serbia and Montenegro. They include Radovan Karadzic and Ratko Mladic, who have been at large for almost nine years. They also include a number of accused charged for their role in the Srebrenica massacres in 1995. The fugitives also include General Vladimir Lazarevic, General Sreten Lukic and General Nebojsa Pavkovic, who were indicted in October 2003 and continue to this day to move freely in Belgrade. Six months before issuing this indictment I informed the Belgrade authorities that Steten Lukic was to be indicted so that steps could be taken to remove him from his official duties, yet despite this knowledge not only did they not remove him from office, but even they saw fit to decorate him. Further it could not be said that the location of these fugitives was unknown to the Belgrade authorities because both Lukic and Pavkovic were candidates in the December 2003 parliamentary elections. Sreten Lukic was dismissed from his position of Assistant Minister of Interior after the establishment of the new government in March 2004. This development, however, was not motivated by any willingness to co-operate with the ICTY, as the new government has failed so far to show any intention to hand over these well-known and high profile figures.

9. On no occasion has the current government of Serbia and Montenegro reported to the Registrar, pursuant to the requirements of Rule 59 of the Tribunal's Rules of Procedure and Evidence, regarding its inability to execute the arrest warrants that had been forwarded by the Tribunal. This failure is despite requests by the Registrar, the latest in April 2004, for such reports to be submitted. Rule 59(B) provides that "If within a reasonable time after the warrant of arrest or transfer order has been transmitted to the State, no report is made on action taken, this shall be deemed a failure to execute the warrant of arrest or transfer order and the Tribunal, through the President, may notify the Security Council accordingly".

10. My Office has continuously shared information with the Serb authorities relating to the location of some of these fugitives in Serbia, so as to facilitate their arrest and transfer to The Hague. The information provided, however, did not result in any concrete results. Last month, for instance, my Office provided specific details about

the location and effective presence of an accused who had been indicted in respect of Srebrenica, yet the authorities refused to act on this information. On other occasions where my Office has shared information relating to the location of fugitives in Serbia, I have never received adequate feedback from the Serb authorities. In failing to apprehend the fugitives on Serbian soil and transfer them to The Hague, Serbia and Montenegro is in clear breach of its obligation to co-operate with the Tribunal. In my view these circumstances cannot be tolerated and it is easy to predict the negative impact this attitude and policy of the Serb authorities will have on the ability of the Tribunal to meet its targets under the Completion Strategy.

DIFFICULTIES OBTAINING EVIDENCE

11. I turn next to the difficulties I have experienced regarding the status of compliance by Serbia and Montenegro with its obligations to co-operate with my Office in respect of requests for assistance pursuant to Rule 39 of the Tribunal's Rules of Procedure and Evidence, in particular regarding my attempts to interview witnesses, gain access to relevant documents and obtaining witnesses to testify in proceedings before the Tribunal.

12. In relation to my efforts to secure witnesses testimonies, the willingness of States to co-operate with the Tribunal, particularly those of the former Yugoslavia, is critical to the success of the Tribunal's mandate. One particular obstacle confronting my Office in relation to securing the testimonies of witnesses from Serbia and Montenegro, is the requirement to obtain permission to conduct witness interviews, which often involves the service of summons to enable such interviews to take place. Even more critically and problematic is the need for potential witnesses to obtain from the Belgrade authorities, waivers or immunities to enable them to co-operate with the Tribunal without fear of domestic prosecution for revealing State secrets. While there has been some developments on locating witnesses[1] and suspects, and providing necessary waivers for witness testimony, and also in delivering Prosecutor's summonses and Court subpoenas, there are nevertheless still serious delays. Currently, over 50 such waivers are outstanding, some for more than a year.

[1] Especially in regard to the Serb victims and the KLA investigation.

13. There is a specific problem with these waivers when they concern high-level witnesses, such as Ministers or other senior military and political leaders. The majority of the 200 waivers granted so far relate to low level policemen or military officers. These matters were addressed in numerous discussions with Foreign Minister Svilanovic, yet despite promises, the situation has not improved. It has to be stressed that Serbia and Montenegro is the only State of the former Yugoslavia to have introduced such cumbersome procedures.

14. Intimidation of witnesses is becoming a more and more important problem in Serbia, and not only for cases related to ICTY. In the past three months, two protected witnesses in the Milosevic trial were threatened by members of the security services.

15. In addition to these difficulties in securing witnesses testimony, my Office experiences similar difficulties in gaining access to relevant documents. To date my Office has been given access to key documents only after protracted litigation. This has been the case in particular regarding documents that show the extent of influence and control of Slobodan Milosevic in the decision-making process regarding the wars in Bosnia and Herzegovina and Croatia.

16. My Office has been faced with obstacles concerning access to documents located in relevant archives and in this regard there has been a general attitude of obstruction. My Office has never received sufficient co-operation in gaining access to relevant documents or even obtaining an overview of the archival holdings that would enable me to make specific requests, instead of what would otherwise be interpreted as "fishing expeditions".

17. Another example of the problems that my Office encountered concerns access to documents relating to Mladic's official JNA file. After long delays and denials that the documents even existed, the Belgrade authorities eventually provided me with a copy of the file. However, this file does not contain any information relating to Mladic's activities after 1992. This leads me to wonder whether this is yet another

attempt to conceal the reality of Yugoslavia's involvement in the war in Bosnia and Herzegovina.

18. Although it is true that, over the years, Belgrade has produced several thousands documents to the ICTY, this has always been under pressure, and mainly as a result of binding orders. Even so, this does not say anything about the quality and relevance of the documents produced. Many highly relevant documents have not been produced. Others have been provided after unacceptable delays, thereby hampering on-going proceedings. Currently, there are over 120 requests for documents outstanding, which represents over 20% of all requests forwarded since 2001.

CONCLUSION

19. I would submit that the co-operation of Serbia and Montenegro with the Tribunal has been slow, partial and inadequate and has come as a result of international pressure Since December 2003, it has been at a standstill. It also appears unrealistic at this stage to expect any significant improvements on the basis of the public statements or actions by the high officials in government in Belgrade.

20. As a consequence, having particular regard to the United Nations Security Council Resolutions 1503 and 1534 and the expectations contained therein regarding the Tribunal's completion strategy, and the impact that the lack of co-operation in the part of Serbia and Montenegro is having on the Tribunal's ability to meet those expectations, I respectfully request you, pursuant to Rule 7 *bis*, to notify the United Nations Security Council of the failure on the part of Serbia and Montenegro to comply with its legal obligations to co-operate with the Tribunal in the above mentioned areas.

Carla Del Ponte
Prosecutor
April 2004.

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